

**ORIGINAL**

**FILED**

August 16 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

No. DA 10-0102  
IN THE SUPREME COURT  
OF THE STATE OF MONTANA

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Martin S. King, Esq.  
Matthew J. Cuffe, Esq.  
WORDEN THANE P.C.  
Attorneys at Law  
P.O. Box 4747  
Missoula, MT 59806-4747  
(406) 721-3400  
Fax: (406) 721-6985  
[mking@wthlaw.net](mailto:mking@wthlaw.net)  
[mcuffe@wthlaw.net](mailto:mcuffe@wthlaw.net)

Attorneys for Petitioner, Montana Bankers Association

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GASTON ENGINEERING & SURVEYING, P.C.

Appellant,

vs.

OAKWOOD PROPERTIES, LLC, and YELLOWSTONE BANK,

Appellees.

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**MONTANA BANKERS ASSOCIATION'S MOTION  
FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF**

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Pursuant to Rule 12(7) of the Montana Rules of Appellate Procedure

MONTANA BANKERS ASSOCIATION'S  
MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

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(2009), the Montana Bankers Association (MBA), respectfully requests leave of the Court to file an amicus curiae brief based on the following:

1. MBA 's interests in this case are the issues regarding the priority of mortgages and other liens under Montana law. The result of this case will affect the commercial banking industry across Montana. As the voice of and representative for Montana banks, MBA seeks to preserve the commercial banking industry in Montana by assuring the continued strength of community banks as providers of capital and credit.

2. An amicus curiae brief by MBA is desirable because of the importance of a healthy banking industry to the State and people of Montana. The decision in this case thus will impact the entire banking industry, as well as those who rely on banks to finance development.

MBA asserts that a purchase money mortgage has priority over a construction lien under Montana law. If this priority is not affirmed by this Court, it will have a chilling effect on property development and financing in Montana as banks will be disinclined to loan money to developers in Montana. There will be no reasonable way for banks to protect themselves if a purchase money mortgage does not maintain priority in a development lien situation.

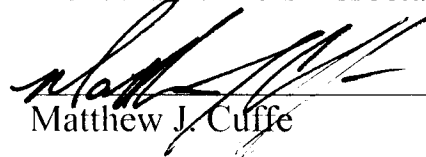
Moreover, as a public policy, construction liens should not be allowed to attach before the construction lien holder owns the property. More regulated than ever before, banking lenders are not willing to risk lending to developers when their purchase money mortgages may not have priority over all other liens.

3. MBA will support the position of Appellee, Yellowstone Bank.
4. The amicus brief can be filed on September 3, 2010.
5. Email and voicemail messages have been left with counsel for Appellant Gaston Engineering & Surveying, P.C. and at the time of filing, MBA has not received a response.

WHEREFORE, Montana Bankers Association respectfully requests that the Court grant leave to file an amicus curiae brief.

DATED this 13<sup>th</sup> day of August, 2010.


Worden Thane P.C.  
Attorneys for Petitioner,  
Montana Bankers Association



Matthew J. Cuffe

## CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 16 of the Montana Rules of Appellate Procedure, I certify that this Motion is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Office Word 2007, is not more than 1,250 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

  
Matthew J. Cuffe


## CERTIFICATE OF SERVICE

I certify that on August 13, 2010, I served a copy of the preceding document by prepaid mail on the following:

Kellie G. Sironi, Esq.  
P.O. Box 81646  
Billings, MT 59106  
Attorneys for Gasston Engineering

David M. Wagner, Esq.  
45 Discovery Drive, Ste. 200  
Bozeman, MT 59715  
Attorneys for Yellowstone Bank

Joseph W. Sabol, II, Esq.  
225 E. Mendenhall  
Bozeman, MT 59715  
Attorneys for Oakwood Properties

  
Julie Ludwick

10008693.WPD